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MEMO ENDORSED

October 17, 2022

Via ECF

Hon. Andrew L. Carter, Jr.
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, NY 10007

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 10/18/2022

**Re: In the Matter of the Complaint of Miller's Tug and Barge
And Miller Marine, Inc. as Owners
S.D.N.Y. 1:20-cv-562
Our File: 1056.40420**

Dear Judge Carter:

We represent petitioners Miller's Tug and Barge, Inc. and Miller Marine, Inc. in the referenced federal admiralty vessel owner Limitation of Liability Act proceeding, arising out of an October 17, 2019, injury to a deckhand assigned to the tug "SHAWN MILLER" while aboard a barge owned by Tappan Zee Constructors ("TZC"). TZC filed its own Limitation of Liability Act proceeding in this Court [1:20-cv-562] as owner of the barge Mr. McLoughlin was injured. The two Limitations have been consolidated.

A fundamental aspect of a Limitation of Liability Action is the restraining order issued by the Court at the commencement of the proceeding. In this action, the Court entered such a restraining order on February 4, 2020, [Docket #5] which provided, in relevant part, that

IT IS FURTHER ORDERED that the further prosecution of any and all actions, suits and proceedings already commenced and the commencement or prosecution hereafter of any and all suits, actions, or proceedings of any nature and description whatsoever in any Court of any jurisdiction, or otherwise, against the petitioners, insurers and/or the vessel, and the taking of any steps, entry of any order or judgment and the making or continuing of any motion in and/or

concerning such actions, suits or proceedings except in this action, with respect to the aforesaid alleged incident, be and they hereby are restrained, stayed and enjoined until the hearing and determination of this action, and all warrants of arrest of the vessel and/or attachments issued or sought in such other suits, actions or legal proceedings be and the same are hereby dissolved and further warrants of arrest of the vessel and/or attachments are hereby prohibited.

TZC filed an Answer to the Petition and Claim against Petitioners [Document #12]. The parties in the two related Limitation proceedings are currently engaged in expert disclosures, and there have been no determinations in this action as to Miller's Tug and Barge's and/or Miller Marine's entitlement to limitation.

The foregoing notwithstanding, on October 12, 2022, TZC commenced a new proceeding against Miller Marine, Inc. arising out of the same injury to Mr. McLoughlin. The action is captioned *Tappan Zee Constructors, LLC v. Miller Marine, Inc. and Miller's Launch, Inc.*, 1:22-cv-8661. Ignoring the specious nature of this complaint, and that TZC filed a claim against Miller Marine in the Limitation, the filing of the complaint by TZC directly contravenes the injunction entered by the Court. TZC's counsel provided the undersigned a courtesy copy of this improper complaint this morning. We requested that it be withdrawn because of this violation of Your Honor's Order. Our request was rejected.

We respectfully request that an Order staying the newly filed action be granted.

Respectfully,

Michael E. Stern

Tappan Zee Constructors, LLC shall respond to Petitioners' letter motion no later than **October 24, 2022**. SO ORDERED.



Barbara Moses
United States Magistrate Judge
October 18, 2022